

The Waste Framework Directive explained

We waited for ages for the new Waste Framework Directive. But now that it's here, uncertainty still remains over its interpretation. **James Phillips and Ross Fairley** explain all the changes

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Following protracted negotiations, the European Council adopted the new Waste Framework Directive (WFD) in October 2008. The WFD must be fully implemented into UK law by December 2010.

The changes to the WFD can be broadly separated into substantive and 'tidying-up' measures. The substantive changes are aimed at encouraging the greater reuse and recycling of waste, whilst the tidying-up measures are aimed at simplifying the fragmented legal framework that has regulated the waste sector to date.

Changes to the definition of 'waste'

Significantly, the definition of 'waste' has been clarified in the revised WFD through specific articles that formally introduce the concepts of 'by-products' and 'end-of-waste'. The introduction of a definition of by-products in Article 5(1) formally recognises the circumstances in which materials may fall outside the definition of waste. This change is intended to reflect the reality that many by-products are reused before entering the waste stream.

Article 6 introduces a definition for end-of-waste that recognises the increasing importance of waste recovery. Provided the statutory conditions are complied with and there has been sufficient recovery, material can cease to be regarded as waste. Article 6(2) confirms that the Commission has committed itself to developing end-of-waste criteria for materials such as aggregate, paper, glass, metal, tyres and textiles.

The revised WFD also contains revisions to the concepts of 'recovery' and 'recycling'. Recycling is now separately defined for the first time, and whilst the list of recovery operations in Annex II has remained the same, this is now stated to be a non-exhaustive list, potentially widening its scope.

Targets

The WFD introduces the first EU wide recycling targets. By 2020, Member States must reuse or recycle 50 per cent (by weight), in total, of certain categories of household waste (and possibly from other origins having similar waste streams) and reuse, recycle or recover 70 per cent (by weight) of non-hazardous construction and demolition waste.

Although waste minimisation targets failed to make the agreed text of the revised WFD, there have been some significant developments in this area. Notably, Member States are required to establish waste prevention programmes within five years after the revised WFD comes into force.

Tidying up measures

The revised WFD streamlines EU waste legislation by repealing the current WFD (2006/12/EC), the directive on hazardous waste (91/689/EEC) and part of the directive on waste oils (75/439/EEC). This coordinated umbrella approach will hopefully lead to a simplification of the development of laws in the area of waste.

Extended producer responsibility

Already a familiar concept through the WEEE Directive and Packaging Waste Directive, Article 8 introduces the concept of extended producer responsibility into the WFD. This provides that Member States may take legislative or non-legislative measures against individuals and organisations, such as requiring the acceptance of returned products and the waste that remains after those products have been used, the subsequent management of the waste and financial responsibility for such activities. Measures to encourage the design of products that are tailored to the requirements of an EPR regime are also promoted.

Conclusion

To a large extent, it is fair to say that many of the principles enshrined in the WFD are already being applied in practice in the UK, both through UK policy and the interpretation of the existing laws by the courts and regulators. Businesses are, therefore, unlikely to feel a dramatic impact when the WFD is formally implemented. However, going forward, having a clear and consistent legal framework will certainly assist businesses and regulators to make decisions on a more certain basis.

In addition, the statutory changes to the definition of waste may well give businesses new scope to argue that their activities should fall outside of the regulatory regime. 